

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

ANDREA NARED,)	
)	
Plaintiff)	CIVIL NO. 06-3375 SBA
)	
vs.)	
)	
MICHAEL ASTRUE,)	[Proposed] ORDER
)	
Social Security,)	
)	
Defendant.)	


This case is before the Court on cross-motions for summary judgment. Based on the pleadings, transcript and argument submitted, Plaintiff's motion for summary judgment is hereby GRANTED and the Defendant's cross-motion is DENIED.

A decision by the Commissioner of Social Security to deny an application for disability benefits "may be set aside if they are based on legal error or are not supported by substantial evidence." *Reddick v. Chater*, 157 F.3d 715, 720 (9th Cir. 1998). In this case, the ALJ found that Ms. Nared had "moderate limits on social functioning and moderate limits on concentration, persistence, and pace." (Administrative transcript, p. 34) He did not include these limitations in his hypothetical question to the vocational expert, instead asking the expert to assume that Ms. Nared was limited to simple routine work. This hypothetical question did not adequately present Ms. Nared's moderate limitations in concentration, persistence and pace and other work-related

abilities to the vocational expert. The Ninth Circuit Court of Appeals specifically rejected the ALJ's approach, approvingly citing the Eighth Circuit's holding in *Newton v. Chater*, 92 F.3d 688, 695 (8th Cir. 1996) that the ALJ's finding that the claimant had limitations in concentration, persistence and pace "was not adequately presented when ALJ's hypothetical limited the claimant to simple jobs." *Thomas v. Barnhart*, 278 F.3d 947, 956 (9th Cir. 2001).

The ALJ's failure to include all Ms. Nared's acknowledged limitations in his hypothetical question to the vocational expert was legal error and the resulting testimony of that expert was not substantial evidence to support a denial of benefits. Accordingly, the decision of the Commissioner is REVERSED and the case REMANDED to the Commissioner of Social Security for a new hearing and decision consistent with this Order.

So ORDERED.


Sandra B. Armstrong
United States District Judge

Dated: 9/28/07